

# **Senate File 330 - Introduced**

SENATE FILE 330  
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1044)

## **A BILL FOR**

1 An Act relating to the division of domestic stock insurers.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1     Section 1.   NEW SECTION.   521I.1   Definitions.

2     As used in this chapter, unless the context otherwise  
3 requires:

4     1.   "*Assets*" means property whether real, personal, mixed,  
5 tangible, or intangible and any right or interest therein,  
6 including all rights under a contract or other agreement.

7     2.   "*Capital*" means the capital stock component of a  
8 statutory surplus as defined in Iowa law.

9     3.   "*Commissioner*" means the commissioner of insurance.

10    4.   "*Divide*" or "*division*" means a transaction in which  
11 a domestic stock insurer splits into two or more resulting  
12 domestic stock insurers.

13    5.   "*Dividing insurer*" means a domestic stock insurer that  
14 approves a plan of division.

15    6.   "*Domestic stock insurer*" means a stock insurer domiciled  
16 and organized under the laws of this state pursuant to chapter  
17 508, 514B, or 515, including domestic stock insurers affiliated  
18 with a mutual insurance holding company organized pursuant to  
19 section 521A.14, and including those insurers which confer  
20 membership rights in the mutual insurance holding company.

21    7.   "*Liability*" means a secured or contingent debt or  
22 obligation arising in any manner.

23    8.   "*Resulting insurer*" means a dividing domestic stock  
24 insurer that survives a division or a new domestic stock  
25 insurer that is created by a division.

26    9.   "*Shareholder*" means the person in whose name shares are  
27 registered in the records of a corporation or the beneficial  
28 owner of shares to the extent of the rights granted by a  
29 nominee certificate on file with a corporation.

30    10.   "*Surplus*" means total statutory surplus less capital  
31 stock calculated in accordance with the current national  
32 association of insurance commissioners' accounting practices  
33 and procedures manual.

34    11.   "*Transfer*" includes an assignment, assumption,  
35 conveyance, sale, lease, encumbrance, security interest, gift,

1 or transfer by operation of law.

2     Sec. 2. NEW SECTION.   521I.2   Plan of division — general  
3 requirements.

4     A domestic stock insurer's plan of division shall include  
5 all of the following:

6       1. The name of the domestic stock insurer seeking to divide.

7       2. The name of each resulting insurer created by the  
8 proposed division and for each resulting insurer a copy of all  
9 of the following:

10       a. Proposed articles of incorporation.

11       b. Proposed bylaws.

12       3. The manner of allocating assets and liabilities,  
13 including policy liabilities, between or among all resulting  
14 insurers.

15       4. The manner of distributing shares in the resulting  
16 insurers to the dividing insurer or the dividing insurer's  
17 shareholders.

18       5. A description of all liabilities and all assets that  
19 the dividing insurer proposes to allocate to each resulting  
20 insurer, including the manner by which the dividing insurer  
21 proposes to allocate all reinsurance contracts.

22       6. All terms and conditions required by the laws of this  
23 state and the articles and bylaws of the dividing insurer.

24       7. All other terms and conditions of the division.

25     Sec. 3. NEW SECTION.   521I.3   Plan of division — dividing  
26 insurer to survive division.

27     If a dividing insurer will survive a division, the plan  
28 of division shall include, in addition to the requirements  
29 pursuant to section 521I.2, all of the following:

30       1. All proposed amendments to the dividing insurer's  
31 articles of incorporation and bylaws.

32       2. If the dividing insurer intends to cancel some but not  
33 all shares in the dividing insurer, the manner in which the  
34 dividing insurer intends to cancel such shares.

35       3. If the dividing insurer intends to convert some but

1 not all shares in the dividing insurer into securities,  
2 obligations, money, other property, rights to acquire shares or  
3 securities, or any combination thereof, a statement disclosing  
4 the manner in which the dividing insurer intends to convert  
5 such shares.

6     Sec. 4. NEW SECTION.   **521I.4 Plan of division — dividing**  
7 **insurer not to survive division.**

8     If a dividing insurer will not survive a division, the plan  
9 of division shall include, in addition to the requirements  
10 pursuant to section 521I.2, the manner in which the dividing  
11 insurer will cancel or convert shares in the dividing insurer's  
12 shares into shares, securities, obligations, money, other  
13 property, rights to acquire shares or securities, or any  
14 combination thereof.

15     Sec. 5. NEW SECTION.   **521I.5 Amending plan of division.**

16     1. A dividing insurer may amend the dividing insurer's  
17 plan of division in accordance with any procedures set forth  
18 in the plan of division, or if no such procedures are set  
19 forth in the plan of division, in a manner determined by the  
20 board of directors of the dividing insurer. A shareholder  
21 that is entitled to vote on or consent to approval of the plan  
22 of division shall be entitled to vote on or consent to an  
23 amendment of the plan of division that will affect any of the  
24 following:

25     a. The amount or kind of shares, securities, obligations,  
26 money, other property, rights to acquire shares or securities,  
27 or any combination thereof to be received by any of the  
28 shareholders of the dividing insurer under the plan of  
29 division.

30     b. The articles of incorporation or bylaws of any resulting  
31 insurer that become effective when the division becomes  
32 effective except for changes that do not require approval of  
33 the shareholders of the resulting insurer under such articles  
34 of incorporation or bylaws.

35     c. Any other terms or conditions of the plan of division

1 if the change may adversely affect the shareholders in any  
2 material respect.

3 2. A dividing insurer shall not amend the dividing insurer's  
4 plan of division after the plan of division becomes effective.

5 3. A dividing insurer shall not amend the dividing insurer's  
6 plan of division after the plan of division is approved by the  
7 commissioner.

8 Sec. 6. NEW SECTION. 521I.6 **Abandoning plan of division.**

9 1. A dividing insurer may abandon the dividing insurer's  
10 plan of division in any of the following circumstances:

11 a. After the dividing insurer has approved the plan  
12 of division without any action by the shareholders and in  
13 accordance with any procedures set forth in the plan of  
14 division, or if no such procedures are set forth in the plan of  
15 division, in a manner determined by the board of directors of  
16 the dividing insurer.

17 b. After the dividing insurer has filed a certificate  
18 of division with the secretary of state pursuant to section  
19 521I.10, the dividing insurer may file a signed certificate of  
20 abandonment with the secretary of state and file a copy with  
21 the commissioner. The certificate of abandonment shall be  
22 effective on the date the certificate of abandonment is filed  
23 with the secretary of state.

24 2. A dividing insurer shall not abandon the dividing  
25 insurer's plan of division after the plan of division becomes  
26 effective.

27 3. If a dividing insurer elects to abandon the dividing  
28 insurer's plan of division, the dividing insurer shall notify  
29 the commissioner.

30 Sec. 7. NEW SECTION. 521I.7 **Approval of plan of division —**  
31 **articles of incorporation and bylaws.**

32 1. A dividing insurer shall not file a plan of division with  
33 the commissioner until such plan of division has been approved  
34 in accordance with all provisions of the dividing insurer's  
35 articles of incorporation and bylaws. If the dividing

1 insurer's articles of incorporation and bylaws do not provide  
2 for approval of a plan of division, the dividing insurer shall  
3 not file the plan of division with the commissioner unless  
4 such plan of division has been approved in accordance with all  
5 provisions of the dividing insurer's articles of incorporation  
6 and bylaws that provide for approval of a merger.

7 2. If a provision of a dividing insurer's articles of  
8 incorporation or bylaws adopted before the effective date of  
9 this Act requires that a specific number of or a percentage  
10 of the board of directors or shareholders propose or adopt a  
11 plan of merger or impose other procedures for the proposal or  
12 adoption of a plan of merger, the dividing insurer shall adhere  
13 to such provision in proposing or adopting a plan of division.  
14 If any such provision of the articles of incorporation or  
15 bylaws is amended on or after the effective date of this Act,  
16 such provision shall apply to a division thereafter only in  
17 accordance with its express terms.

18 Sec. 8. NEW SECTION. 521I.8 Commissioner approval of plan  
19 of division.

20 1. After a dividing insurer approves a plan of division  
21 pursuant to section 521I.7, the dividing insurer shall file the  
22 plan of division with the commissioner. Within ten business  
23 days of filing the plan of division with the commissioner, the  
24 dividing insurer shall provide notice of the filing to each  
25 reinsurer that is a party to a reinsurance contract allocated  
26 in the plan of division.

27 2. a. A division shall not become effective until approved  
28 by the commissioner after reasonable notice and a public  
29 hearing. Notice and public hearing required under this section  
30 shall be conducted as a contested case pursuant to chapter 17A.

31 b. The commissioner shall require the dividing insurer  
32 to mail written notice of the public hearing to the dividing  
33 insurer's policyholders stating that a plan of division has  
34 been filed with the commissioner and providing the date, time,  
35 and location of the public hearing.

1     *c.* The commissioner shall select and retain an independent  
2 expert who shall review the dividing insurer's plan of division  
3 and issue a report to the commissioner.

4     3. The commissioner may approve a plan of division if the  
5 commissioner finds that all of the following apply:

6     *a.* The interest of the policyholders, creditors, or  
7 shareholders of the dividing insurer will be adequately  
8 protected and the plan of division is not unfair or  
9 unreasonable to the policyholders of the dividing insurer and  
10 is not contrary to the public interest.

11    *b.* The financial condition of the resulting insurers will  
12 not jeopardize the financial stability of a dividing insurer  
13 or the resulting insurers or prejudice the interests of the  
14 policyholders of such insurers.

15    *c.* All resulting insurers created by the proposed division  
16 will be qualified and eligible to receive a certificate of  
17 authority to transact the business of insurance in this state.

18    *d.* The proposed division does not violate a provision of  
19 chapter 684. In a division in which the dividing insurer  
20 will survive, the commissioner shall apply chapter 684 to the  
21 dividing insurer in its capacity as a resulting insurer. In  
22 applying the provisions of chapter 684 to a resulting insurer,  
23 the commissioner shall do all of the following:

24       (1) Treat the resulting insurer as a debtor.

25       (2) Treat a liability allocated to the resulting insurer as  
26 a liability incurred by a debtor.

27       (3) Treat the resulting insurer as receiving unequal value  
28 in exchange for incurring allocated obligations.

29       (4) Treat assets allocated to the resulting insurer as  
30 remaining assets.

31    *e.* The proposed division is not being made for the purpose  
32 of hindering, delaying, or defrauding any policyholders or  
33 other creditors of the dividing insurer.

34    *f.* All resulting insurers will be solvent when the division  
35 becomes effective.

1     g. The remaining assets of a resulting insurer will not be  
2 unreasonably small in relation to the business and transactions  
3 such resulting insurer has been engaged in or will engage in  
4 after completion of the division.

5     4. In determining if the standards set forth in subsection  
6 3, paragraphs "c" through "g" are satisfied, the commissioner  
7 may consider all proposed assets of the resulting insurer  
8 including without limitation reinsurance agreements, parental  
9 guarantees, support agreements, keepwell agreements, and  
10 capital maintenance of contingent capital agreements regardless  
11 of whether such qualify as an admitted asset under state law.

12     5. All expenses incurred by the commissioner in connection  
13 with proceedings under this section including expenses  
14 for attorneys, actuaries, accountants, and other experts  
15 not otherwise a part of the commissioner's staff as may be  
16 reasonably necessary to assist the commissioner in reviewing  
17 a proposed plan of division shall be paid by the dividing  
18 insurer filing such plan. A dividing insurer may allocate such  
19 expense in a plan of division in the same manner as any other  
20 liability.

21     6. If the commissioner approves a plan of division the  
22 commissioner shall issue an order which shall be accompanied  
23 by findings of fact and conclusions of law. The commissioner  
24 shall also issue a certificate of authority authorizing the  
25 resulting insurers to transact the business of insurance in  
26 this state.

27     7. The conditions in this section for freeing one or more  
28 of the resulting insurers from the liabilities of the dividing  
29 insurer and for allocating some or all of the liabilities of  
30 the dividing insurer shall be deemed to have been satisfied if  
31 the plan of division is approved by the commissioner in a final  
32 order.

33     Sec. 9. NEW SECTION. 521I.9 Confidentiality.

34     A dividing insurer may submit a written request to the  
35 commissioner that confidentiality be maintained regarding



1 all business, financial, actuarial, and other proprietary  
 2 information submitted to, obtained by, or disclosed to the  
 3 commissioner in connection with the dividing insurer's plan  
 4 of division. The commissioner shall make a determination  
 5 regarding the dividing insurer's request prior to issuing  
 6 a notice of a public hearing pursuant to section 521I.8,  
 7 subsection 2. If the commissioner grants the dividing  
 8 insurer's request in whole or in part, such information as the  
 9 commissioner determines shall remain confidential, shall not be  
 10 available for public inspection, and shall not be subject to  
 11 chapter 22. The plan of division shall not be confidential and  
 12 shall be available for public inspection.

13 Sec. 10. NEW SECTION. 521I.10 Certificate of division.

14 1. If the commissioner approves a dividing insurer's plan  
 15 of division pursuant to section 521I.8, an officer or duly  
 16 authorized representative of the dividing insurer shall sign a  
 17 certificate of division that sets forth all of the following:

18 a. The name of the dividing insurer.

19 b. A statement disclosing whether the dividing insurer  
 20 survived the division. If the dividing insurer survived  
 21 the division, the certificate of division shall include any  
 22 amendments to the dividing insurer's articles of incorporation  
 23 or bylaws as approved as part of the plan of division.

24 c. The name of each resulting insurer that is created by  
 25 the division.

26 d. The date on which the division is effective.

27 e. A statement that the division was approved by the  
 28 commissioner under section 521I.8.

29 f. A statement that the dividing insurer provided reasonable  
 30 notice to each reinsurer that is a party to a reinsurance  
 31 contract allocated in the plan of division.

32 g. The resulting insurer's articles of incorporation and  
 33 bylaws for each resulting insurer created by the division. The  
 34 articles of incorporation and bylaws of each resulting insurer  
 35 must comply with the applicable requirements of the laws of

1 this state. The articles of incorporation and bylaws may state  
2 the name or address of an incorporator, may be signed, and may  
3 include any provision that is not required in a restatement of  
4 the articles of incorporation or bylaws.

5     *h.* A reasonable description of the capital, surplus, other  
6 assets and liabilities, including policy liabilities, of the  
7 dividing insurer that are to be allocated to each resulting  
8 insurer.

9     2. A dividing insurer's certificate of division is  
10 effective on the date the dividing insurer files the  
11 certificate with the secretary of state and provides a  
12 concurrent copy to the commissioner, or on another date  
13 as specified in the plan of division, whichever is later.  
14 However, the certificate of division shall become effective  
15 not later than ninety calendar days after it is filed with the  
16 secretary of state. A division shall be effective when the  
17 relevant certificate of division is effective.

18     Sec. 11. NEW SECTION. **521I.11 Division effective.**

19     1. On the effective date of a division pursuant to section  
20 521I.10, the following apply:

21     *a.* If the dividing insurer survives, all of the following  
22 apply:

23         (1) The dividing insurer shall continue to exist.

24         (2) The articles of incorporation of the dividing insurer  
25 shall be amended, if at all, if provided for in the plan of  
26 division.

27         (3) The bylaws of the dividing insurer shall be amended, if  
28 at all, if provided for in the plan of division.

29     *b.* If the dividing insurer does not survive, the dividing  
30 insurer's separate existence shall cease to exist and any  
31 resulting insurer created by the plan of division shall come  
32 into existence.

33     *c.* Each resulting insurer shall hold any capital, surplus,  
34 and other assets allocated to such resulting insurer by the  
35 plan of division as a successor to the dividing insurer by

1 operation of law, and not by transfer, whether directly or  
2 indirectly. The articles of incorporation and bylaws, if any,  
3 of each resulting insurer shall be effective when the resulting  
4 insurer comes into existence.

5 *d.* (1) All capital, surplus, and other assets of the  
6 dividing insurer that are allocated by the plan of division  
7 shall vest in the applicable resulting insurer as provided in  
8 the plan of division or shall remain vested in the dividing  
9 insurer as provided in the plan of division.

10 (2) All capital, surplus, and other assets of the dividing  
11 insurer that are not allocated by the plan of division shall  
12 remain vested in the dividing insurer if the dividing insurer  
13 survives the division and shall be allocated to and vest pro  
14 rata in the resulting insurers individually if the dividing  
15 insurer does not survive the division.

16 (3) All capital, surplus, and other assets of the dividing  
17 insurer otherwise vest as provided in this section without  
18 transfer, reversion, or impairment.

19 *e.* A resulting insurer to which a cause of action is  
20 allocated may be substituted or added in any pending action or  
21 proceeding to which the dividing insurer is a party when the  
22 division becomes effective.

23 *f.* All liabilities of a dividing insurer are allocated  
24 between or among any resulting insurers as provided in section  
25 521I.10 and each resulting insurer to which liabilities are  
26 allocated is liable only for those liabilities, including  
27 policy liabilities, allocated as a successor to the dividing  
28 insurer by operation of law.

29 *g.* Any shares in the dividing insurer that are to be  
30 converted or canceled in the division are converted or canceled  
31 and the shareholders of those shares are entitled only to  
32 the rights provided to such shareholders under the plan of  
33 division and any appraisal rights that such shareholders may  
34 have pursuant to section 521I.13.

35 2. Except as provided in the dividing insurer's articles

1 of incorporation or bylaws, the division does not give rise  
2 to any rights that a shareholder, director of a domestic  
3 stock insurer, or third party would have upon a dissolution,  
4 liquidation, or winding up of the dividing insurer.

5 3. The allocation to a resulting insurer of capital,  
6 surplus, or other asset that is collateral covered by an  
7 effective financing statement shall not be effective until a  
8 new effective financing statement naming the resulting insurer  
9 as a debtor is effective under the uniform commercial code.

10 4. Unless otherwise provided in the plan of division,  
11 the shares in and any securities of each resulting insurer  
12 shall be distributed to the dividing insurer if it survives  
13 the division, or pro rata to the shareholders of the dividing  
14 insurer that do not assert any appraisal rights pursuant to  
15 section 521I.13.

16 Sec. 12. NEW SECTION. 521I.12 Resulting insurers liability  
17 for allocated assets, debts, and liabilities.

18 1. Except as expressly provided in this section, when a  
19 division becomes effective, by operation of law all of the  
20 following apply:

21 a. A resulting insurer is individually liable for the  
22 liabilities, including policy liabilities, that the resulting  
23 insurer issues, undertakes, or incurs in its own name after the  
24 division.

25 b. A resulting insurer is individually liable for the  
26 liabilities, including policy liabilities, of the dividing  
27 insurer that are allocated to or remain the liability of the  
28 resulting insurer to the extent specified in the plan of  
29 division.

30 c. The dividing insurer remains responsible for the  
31 liabilities, including policy liabilities, of the dividing  
32 insurer that are not allocated by the plan of division if the  
33 dividing insurer survives the division.

34 d. A resulting insurer is liable pro rata individually for  
35 the liabilities, including policy liabilities, of the dividing

1 insurer that are not allocated by the plan of division if the  
2 dividing insurer does not survive the division.

3 2. Except as otherwise expressly provided in this section,  
4 when a division becomes effective a resulting insurer is not  
5 responsible for and shall not have liability for any of the  
6 following:

7 a. Any liabilities, including policy liabilities, that  
8 another resulting insurer issues, undertakes, or incurs in such  
9 resulting insurer's own name after the division.

10 b. Any liabilities, including policy liabilities, of the  
11 dividing insurer that are allocated to or remain the liability  
12 of another resulting insurer under the plan of division.

13 3. If a provision of any evidence of indebtedness, whether  
14 secured or unsecured, or a provision of any contract other than  
15 an insurance policy, annuity, or reinsurance agreement that was  
16 issued, incurred, or executed by the dividing insurer before  
17 the effective date of this Act, requires the consent of the  
18 obligee to a merger of the dividing insurer, or treats such a  
19 merger as a default, such provision shall apply to a division  
20 of the dividing insurer as if such division were a merger.

21 4. If a division breaches a contractual obligation of  
22 the dividing insurer, all resulting insurers are jointly  
23 and severally liable for the breach. The validity and  
24 effectiveness of the division shall not be affected by the  
25 breach.

26 5. A direct or indirect allocation of capital, surplus,  
27 assets, or liabilities, including policy liabilities, shall  
28 occur automatically, by operation of law, and shall not be  
29 treated as a distribution or transfer for any purpose with  
30 respect to either the dividing insurer or any resulting  
31 insurer.

32 6. Liens, security interests, and other charges on the  
33 capital, surplus, or other assets of the dividing insurer  
34 shall not be impaired by the division, notwithstanding any  
35 otherwise enforceable allocation of liabilities, including

1 policy liabilities, of the dividing insurer.

2 7. If the dividing insurer is bound by a security agreement  
3 governed by chapter 554 or article 9 of the uniform commercial  
4 code as enacted in any other jurisdiction, and the security  
5 agreement provides that the security interest attaches to  
6 after-acquired collateral, a resulting insurer shall be bound  
7 by the security agreement.

8 8. Unless provided in the plan of division and specifically  
9 approved by the commissioner, an allocation of a policy or  
10 other liability is prohibited from doing any of the following:

11 a. Affecting the rights that a policyholder or creditor  
12 has under any other law with respect to such policy or other  
13 liability, except that such rights shall be available only  
14 against a resulting insurer responsible for the policy or  
15 liability under this section.

16 b. Releasing or reducing the obligation of a reinsurer,  
17 surety, or guarantor of the policy or liability.

18 9. A resulting insurer shall only be liable for the  
19 liabilities allocated to the resulting insurer in accordance  
20 with the plan of division and this section and shall not be  
21 liable for any other liabilities under the common law doctrine  
22 of successor liability or any other theory of liability  
23 applicable to transferees or assignees of assets.

24 Sec. 13. NEW SECTION. 521I.13 Shareholder appraisal rights.

25 If a dividing insurer does not survive a division, an  
26 objecting shareholder of the dividing insurer is entitled to  
27 appraisal rights and to obtain payment of the fair value of  
28 such shareholder's shares in the same manner and to the extent  
29 provided for a corporation as a party to a merger pursuant to  
30 section 490.1302.

31 Sec. 14. NEW SECTION. 521I.14 Rules.

32 The commissioner may adopt rules pursuant to chapter 17A to  
33 administer this chapter.

34 Sec. 15. NEW SECTION. 521I.15 Enforcement.

35 The commissioner may take any action under the

1 commissioner's authority to enforce compliance with this  
2 chapter.

3 Sec. 16. Section 490.120, subsection 12, paragraph c,  
4 subparagraph (2), Code 2019, is amended to read as follows:

5 (2) "*Plan*" means a plan of merger ~~or~~, a plan of share  
6 exchange, or a plan of division pursuant to chapter 521I.

7 Sec. 17. Section 490.1302, subsection 1, Code 2019, is  
8 amended by adding the following new paragraph:

9 NEW PARAGRAPH. *g.* Consummation of a division pursuant  
10 to chapter 521I to which the corporation is a party if the  
11 corporation does not survive such division.

12 Sec. 18. Section 521.1, Code 2019, is amended by adding the  
13 following new subsections:

14 NEW SUBSECTION. 5. "*Dividing insurer*" means the same as  
15 defined in section 521I.1.

16 NEW SUBSECTION. 6. "*Resulting insurer*" means the same as  
17 defined in section 521I.1.

18 Sec. 19. NEW SECTION. **521.19 Merger or consolidation**  
19 **effective with division.**

20 A dividing insurer and the dividing insurer's officers,  
21 directors, and shareholders shall have the authority to adopt  
22 and execute a plan of merger or consolidation on behalf of a  
23 resulting insurer, to execute and deliver documents, plans,  
24 certificates, and resolutions, and to make any filings on  
25 behalf of such resulting insurer. If provided in a plan of  
26 merger or consolidation, the merger or consolidation shall be  
27 effective simultaneously with the effectiveness of a division  
28 pursuant to 521I.10.

29 EXPLANATION

30 The inclusion of this explanation does not constitute agreement with  
31 the explanation's substance by the members of the general assembly.

32 This bill relates to the division of domestic stock  
33 insurers.

34 The bill defines a domestic stock insurer as a stock insurer  
35 domiciled and organized under the laws of this state pursuant

1 to Code chapter 508, 514B, or 515, including domestic stock  
2 insurers affiliated with a mutual insurance holding company  
3 organized pursuant to Code section 521A.14, and including those  
4 insurers which confer membership rights in the mutual insurance  
5 company. A dividing insurer is defined as a domestic stock  
6 insurer that approves a plan of division (plan). A resulting  
7 insurer is defined as a dividing insurer that survives a  
8 division, or a new domestic stock insurer that is created by  
9 a division.

10 The bill requires a dividing insurer to develop a plan that  
11 identifies the dividing insurer's name, the proposed resulting  
12 insurers and their articles of incorporation and bylaws, the  
13 allocation of the dividing insurer's assets, liabilities,  
14 and reinsurance contracts to the resulting insurers, and the  
15 manner in which the shares in the resulting insurers will be  
16 distributed to the dividing insurer or its shareholders.

17 If the dividing insurer will survive the division, the plan  
18 must also include any proposed amendments to the dividing  
19 insurer's articles of incorporation and bylaws and the manner  
20 in which the dividing insurer proposes to cancel or convert  
21 some of its shares. If the dividing insurer will not survive  
22 the division, the plan of division must include details on how  
23 the dividing insurer will cancel or convert its shares.

24 The bill allows a dividing insurer to amend or abandon a  
25 plan under certain conditions as detailed in the bill. If a  
26 dividing insurer elects to abandon the dividing insurer's plan  
27 of division, the dividing insurer is required to notify the  
28 commissioner.

29 The bill requires that prior to filing a plan with the  
30 commissioner, a dividing insurer must obtain approval in  
31 accordance with its articles of incorporation and bylaws. If  
32 the articles of incorporation and bylaws do not provide for  
33 such approval, the dividing insurer must obtain approval in  
34 accordance with all provisions of such that apply to approval  
35 of a merger.



1 The bill provides that a division is not effective until  
2 approved by the commissioner after reasonable notice and a  
3 public hearing. The commissioner shall require the dividing  
4 insurer to mail written notice of the public hearing to the  
5 dividing insurer's policyholders advising the policyholders  
6 that a plan of division has been filed and providing the date,  
7 time, and location of the public hearing.

8 The commissioner must retain an independent expert to  
9 review the dividing insurer's plan of division and issue a  
10 report to the commissioner. The commissioner may approve a  
11 plan if the commissioner determines that the interests of the  
12 policyholders, creditors, or shareholders of the dividing  
13 insurer are adequately protected and the proposed division is  
14 not unfair or unreasonable to the policyholders of the dividing  
15 insurer; that the division is not contrary to public policy;  
16 that the financial condition of the resulting insurers will  
17 not jeopardize the financial stability of a dividing insurer  
18 or the resulting insurers or prejudice the interests of the  
19 policyholders of such insurers; that all resulting insurers  
20 created by the proposed division are qualified and eligible to  
21 receive a certificate of authority to transact the business  
22 of insurance in this state; that the proposed division does  
23 not violate the state's voidable transactions statute; that  
24 the proposed division is not for the purpose of hindering,  
25 delaying, or defrauding any policyholders or other creditors  
26 of the dividing insurer; that all resulting insurers will be  
27 solvent; and that the remaining assets of a resulting insurer  
28 will not be unreasonably small in relation to the business and  
29 transactions in which such resulting insurer has been engaged  
30 in or will engage in after completion of the division.

31 The bill requires the commissioner to issue an order,  
32 including findings of fact and conclusions of law, to approve a  
33 plan of division and to issue a certificate of authority to the  
34 resulting insurers.

35 A dividing insurer may submit a written request to the

1 commissioner that confidentiality be maintained regarding all  
2 business and other proprietary information submitted to the  
3 commissioner in connection with the dividing insurer's plan of  
4 division. The commissioner must make a determination regarding  
5 the dividing insurer's request prior to issuing a notice of  
6 a public hearing. If the commissioner grants the request,  
7 any information the commissioner determines shall remain  
8 confidential is not available for public inspection and shall  
9 not be subject to Code chapter 22. The plan of division is not  
10 confidential and shall be available for public inspection.

11 If the commissioner approves a dividing insurer's plan, an  
12 officer of the dividing insurer must sign a certificate of  
13 division that sets forth information, as detailed in the bill,  
14 related to the dividing insurer's post-division status and any  
15 resulting insurer's post-division status. A certificate of  
16 division is effective on the date the dividing insurer files  
17 the certificate with the secretary of state as specified in  
18 the plan of division. The certificate of division becomes  
19 effective not later than 90 days after it is filed.

20 When a division becomes effective and the dividing insurer  
21 survives, the bill provides that the dividing insurer continues  
22 to exist and that the articles of incorporation and the bylaws  
23 of the dividing insurer must be amended as provided in the  
24 plan. If the dividing insurer does not survive, the dividing  
25 insurer's separate existence ceases to exist and any resulting  
26 insurers created by the plan come into existence. The bill  
27 provides that all resulting insurers hold any capital, surplus,  
28 and other assets allocated to each as a successor to the  
29 dividing insurer by operation of law, and not by transfer. All  
30 capital, surplus, and other assets of the dividing insurer  
31 that are allocated by the plan of division either vest in the  
32 applicable resulting insurer or remain vested in the dividing  
33 insurer as provided in the plan. All capital, surplus, and  
34 other assets that are not allocated by the plan remain vested  
35 in the dividing insurer if the dividing insurer survives the

1 division, are allocated to the resulting insurers individually  
2 if the dividing insurer does not survive the division, or vest  
3 as otherwise provided in the bill.

4 A resulting insurer to which a cause of action is allocated  
5 may be substituted or added in any pending action to which  
6 the dividing insurer is a party when the division becomes  
7 effective. All liabilities of a dividing insurer are allocated  
8 between or among any resulting insurers and each resulting  
9 insurer to which liabilities are allocated is liable only for  
10 those liabilities, including policy liabilities, allocated as a  
11 successor to the dividing insurer.

12 The bill also provides that when a division becomes  
13 effective any shares in the dividing insurer that are converted  
14 or canceled entitle the shareholders of those shares to  
15 the rights provided under the plan of division and per any  
16 appraisal rights they may have as detailed in the bill.

17 Unless otherwise provided in the plan, the shares and  
18 securities of each resulting insurer are distributed to the  
19 dividing insurer if it survives the division, or pro rata to  
20 any shareholders of the dividing insurer that do not assert  
21 appraisal rights.

22 The bill provides that after a division becomes effective,  
23 each resulting insurer is individually liable for all  
24 liabilities that such resulting insurer issues, undertakes, or  
25 incurs in its own name; each resulting insurer is individually  
26 liable for the liabilities of the dividing insurer that are  
27 allocated to or remain the liability of such resulting insurer  
28 as specified in the plan; and the dividing insurer remains  
29 responsible for all liabilities of the dividing insurer that  
30 are not allocated by the plan if the dividing insurer survives  
31 the division. If the dividing insurer does not survive the  
32 division, each resulting insurer is pro rata individually  
33 liable for all liabilities of the dividing insurer that are not  
34 allocated by the plan.

35 If a division breaches a contractual obligation of the

1 dividing insurer, all resulting insurers are liable, jointly  
2 and severally, for the breach. The validity and effectiveness  
3 of the division are not affected by the breach.

4 In a division, a direct or indirect allocation of capital,  
5 surplus, assets, or liabilities, including policy liabilities,  
6 occurs automatically by operation of law and is not treated  
7 as a distribution or transfer for any purpose with respect to  
8 either the dividing insurer or any of the resulting insurers.

9 Except as provided in the plan and as approved by the  
10 commissioner, an allocation of a policy or other liability does  
11 not affect the rights that a policyholder or creditor has under  
12 any other law with respect to such policy or other liability,  
13 except that such rights are available only against a resulting  
14 insurer responsible for the policy or liability. A reinsurer,  
15 surety, or guarantor of the policy or liability is not released  
16 from their obligations under the policy or other liability.

17 The bill allows the commissioner to adopt rules pursuant  
18 to Code chapter 17A to administer the requirements of the  
19 bill and allows the commissioner to take any action under the  
20 commissioner's authority to enforce compliance with the bill.

21 The bill amends Code section 490.120 to add a plan of  
22 division to the definition of plan. The bill amends Code  
23 section 490.1302 to provide for shareholder appraisal rights  
24 for a division to which a corporation is a party, if the  
25 corporation does not survive such division. The bill amends  
26 Code chapter 521 to allow a dividing insurer to adopt and  
27 execute a plan of merger or consolidation on behalf of a  
28 resulting insurer and if provided for in the plan of merger or  
29 consolidation, the merger or consolidation shall be effective  
30 simultaneously with the effectiveness of a division under the  
31 bill.